

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MACEDONIO JOSE ARELLANO,

Defendant and Appellant.

E047681

(Super.Ct.No. FSB802626)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace,  
Judge. Affirmed.

Douglas G. Benedon, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Charles C.  
Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Macedonio Jose Arellano was convicted by a jury of being a felon in possession of a firearm. (Pen. Code, § 12021, subd. (a)(1).)<sup>1</sup> The jury also found true the allegation that the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in criminal conduct by gang members. (§ 186.22, subd. (b)(1)(A).) Defendant's appeal challenges only the sufficiency of the evidence to support the jury's true finding on the gang allegation.

### FACTUAL AND PROCEDURAL BACKGROUND

At trial, the parties stipulated defendant was a "felon" within the meaning of section 12021 because he was previously convicted of a felony. Only two witnesses testified at defendant's trial. The prosecution presented testimony by the gang investigator who found the firearm in defendant's home. Defendant testified in his own defense. He conceded possession of the firearm by testifying his uncle gave him the gun when he was about nine years old, and he keeps it for protection of the house and family but has never taken it outside, pointed it at anyone, or used it to commit a crime. Thus, the gang allegation was the only contested issue in the case.

The gang investigator testified he obtained a search warrant for defendant's residence while investigating another matter. On June 24, 2008, he went to defendant's home to conduct the search. On the way to the home, he saw defendant walking together with another documented gang member named Marcelo Guzman (Guzman). The investigator

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

made contact with defendant and Guzman and told defendant he had a warrant to search his residence. Defendant accompanied the investigator to the residence so he could be present during the search.

When they arrived at the residence, the investigator knocked on the door. Defendant's grandfather answered the door and stated he lived there. When informed of the search warrant, defendant's grandfather directed the investigator to defendant's room. In the room, the investigator found a .22 palm rifle tucked in between the wall and a dresser. Inside the dresser, the investigator also found gang paraphernalia, including identification cards with defendant's name and photograph. On top of the dresser, he found a blue bandanna typically worn by South Side Colton (SSC) gang members, numerous compact discs with gang monikers and names written on them, and a book with gang writing on it.

The jury found defendant guilty as charged. Based on the jury's guilty verdict and true finding on the gang allegation, the trial court sentenced defendant to the middle term of two years, plus the middle term of three years on the gang enhancement. Because defendant admitted he served a prior prison term, the trial court also added a one-year enhancement pursuant to section 667.5, subdivision (b). As a result, defendant is serving a total of six years in state prison.

### DISCUSSION

Defendant believes the evidence is insufficient to support the gang allegation because he acted alone and there is nothing but expert opinion evidence to suggest his possession of the firearm was specifically intended to promote, further, or assist in criminal conduct by gang members. For the jury to infer he specifically intended to promote, further, or assist in

criminal conduct by gang members, defendant believes the prosecution was required to present evidence other than the expert's testimony to show his possession of the firearm was in some way connected to criminal gang activity.

“In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Section 186.22, subdivision (b)(1), provides for enhanced penalties when offenses are committed “for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . .” “It is well settled that a trier of fact may rely on expert testimony about gang culture and habits to reach a finding on a gang allegation.” (*In re Frank S.* (2006) 141 Cal.App.4th 1192, 1196 (*Frank S.*).

Defendant contends the facts of his case are “strikingly similar” to those at issue in *Frank S.* The minor in *Frank S.* was stopped by police while riding a bicycle because he did

not stop for a red traffic light. He was found to be carrying a small amount of a controlled substance, a red bandana, and a concealed knife. After he was arrested, the minor told police he had recently been attacked and needed the knife for protection. He had friends who were members of a northern gang, and members of a southern gang believed he supported the northerners. (*Frank S.*, *supra*, 141 Cal.App.4th at p. 1195.) During intake at the juvenile detention center, the minor identified himself as a member of the northern gang. Based on these circumstances, a gang expert testified she believed defendant was an active gang member. She also said the minor's possession of the knife benefited the gang because "it helps provide them protection should they be assaulted." (*Id.* at pp. 1195-1196.)

The appellate court in *Frank S.* concluded there was insufficient evidence to show the defendant had the specific intent to use the knife to promote, further, or assist criminal gang activity. (*Frank S.*, *supra*, 141 Cal.App.4th at p. 1199.) In reaching its decision, the appellate court stated as follows: "[T]he expert simply informed the judge of her belief of the minor's intent with possession of the knife, an issue reserved to the trier of fact. . . . However, unlike in other cases, the prosecution presented no evidence other than the expert's opinion regarding gangs in general and the expert's improper opinion on the ultimate issue to establish that possession of the weapon was 'committed for the benefit of, at the direction of, or in association with any criminal street gang . . . .' (§ 186.22, subd. (b)(1).) The prosecution did not present any evidence that the minor was in gang territory, had gang members with him, or had any reason to expect to use the knife in a gang-related offense. In fact, the only other evidence was the minor's statement to the arresting officer that he had been jumped two days prior and needed the knife for protection.

To allow the expert to state the minor's specific intent for the knife without any other substantial evidence opens the door for prosecutors to enhance many felonies as gang-related and extends the purpose of the statute beyond what the Legislature intended." (*Ibid.*)

Contrary to defendant's argument, the facts of this case are not "strikingly similar" but are instead distinguishable from those at issue in *Frank S.* While the evidence of the minor's participation in gang activity was minimal in *Frank S.*, defendant in this case has a long, documented history of involvement in the SSC gang. There was an abundance of evidence indicating defendant had not only been a gang member for a long time but was still actively involved in the SSC gang at the time the firearm was found in his bedroom. Defendant was first documented by police as a member of SSC in 2000. He has a number of tattoos on his body indicative of his loyalty to the gang. These tattoos include the letters "S-S" on the back of his head and the words "South Side Colton" on the back of his neck. Police noted the existence of these tattoos sometime in 2007. In addition, defendant has the word "Colton" tattooed on his abdomen, and the letters "IE" for "Inland Empire" tattooed on his chest. Police first documented the "Colton" tattoo in 2005 and the "IE" tattoo in June of 2008.

Defendant did tell the jury he stopped being involved with the gang in 2005. He also attempted to diminish the significance of the documentation evidence by testifying he got all of his tattoos around the same time and prior to 2005 but police just missed them. However, the jury was not obligated to believe defendant's explanations, particularly given the abundance of other evidence he is still an active member of the SSC gang. First, the gang expert testified he believes defendant is still an active gang member. This was evident

largely because defendant still resides in a neighborhood which is “within the turf claimed by South Side Colton.” In addition, on the day he executed the search warrant, the gang expert found defendant walking down the street with another documented gang member on SSC’s turf and with the SSC tattoo fully visible on the back of his head. During cross-examination, defendant also admitted posing for a picture with other gang members flashing gang signs in July 2007.

The expert did say it is possible for gang members to become inactive and leave a gang. However, he explained they would need to move out of the gang’s territory, cut all ties to other gang members, and hide their gang tattoos in order to do so effectively. This is because a gang member who denounces his membership but remains on the turf and continues to display his gang tattoos would be targeted for assault by other members on a regular basis. In fact, the expert knows of several occasions where active gang members caught inactive members still displaying their gang tattoos and burned, ground, or etched them off. During cross-examination, defendant indicated the gang expert’s testimony about the treatment of inactive gang members “seemed pretty accurate.” In other words, if defendant was truly an inactive gang member, it is highly unlikely he would have been seen on June 24, 2008, publicly walking down the street with another gang member on that gang’s turf and with his SSC tattoo fully visible on the back of his head.

Second, the expert’s testimony about gang culture and gang operations in this case was significantly more extensive than that offered by the expert in *Frank S.* The expert testified that gangs generally control the illegal drug trade on their turf and are “continuously and repeatedly engaged in criminal activity.” Defendant’s gang, SSC, is

particularly known for committing crimes, such as carjackings, robberies, murders, and weapons possession. Most significantly, there was a great deal of testimony about the possession and use of guns by gang members. The expert said guns are revered by gangs, because they provide an instant source of fear and intimidation, and this fear and intimidation can be used to commit violent crimes. Gang members typically keep guns to protect their turf and themselves from rival gang members and to commit violent crimes. Guns are not just considered an individual gang member's private property. Guns belong to the gang and are loaned to other members. A member who owns a gun commands more respect by other members, because he is always "ready for battle" and can be called upon to assist other members. If a gun is used to commit a crime, the perpetrator might want to "keep it off the streets" for awhile to avoid detection by giving it to trusted gang or family members who are less likely to be contacted about it by authorities.

Finally, the type of firearm found hidden in defendant's bedroom, as well as its physical condition, told its own story, and this story supported the expert's testimony and was itself indicative of active gang involvement. The expert said, "Rifles are particularly an offensive weapon as opposed to a handgun, which is a defensive weapon. When you have a rifle, you can usually use it in some sort of offense, maybe something like a drive-by or a walk-up shooting, or something like that, or as a means to commit some other crime." The stock of the rifle was cut off, which the expert said would make it "more readily concealable to where you can walk around with it on the street without it being noticeable." The rifle appeared to be functional and was loaded. The serial number had been filed off, another means to avoid detection by authorities. From these facts, together with the gang expert's



testimony about gang culture and operations, the jury could reasonably infer defendant did not simply possess the firearm for protection of the house and his family.

Based on the foregoing, there is substantial, convincing evidence in the record showing the firearm found hidden in defendant's bedroom was possessed "with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . ."

(§ 186.22, subd. (b)(1).) Because there is substantial evidence in the record to support the jury's true finding on this gang allegation, we cannot disturb that finding.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

KING

J.